

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14867 of 2018

Decided on 08.05.2019

Tek Chand

...Petitioner

Versus

State of Haryana & Ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Chanderhas Yadav, Advocate for the petitioner

Ms. Vibha Tewari, AAG Haryana

G.S. SANDHAWALIA, J. (Oral)

This order shall dispose of CWP Nos.14867, 22274, 22349 & 22354 of 2018 as the point in issue is common. For brevity, the facts are being taken from CWP No.14867 of 2018. Notice of motion was issued and since reply was not forthcoming, this Court on 27.02.2019 imposed cost of ₹ 5000/- (in each case) upon the respondents. Photocopy of payment of cost of ₹ 20,000/- has been placed on record by State. Replies have also been filed in each case which are taken on record. The same be tagged at appropriate place.

This writ petition under Articles 226/227 of the Constitution of India seeks setting aside of the order dated 15.02.2018 (P5) passed by Additional District Judge, Jhajjar vide which the application of the petitioner was returned. A further prayer is sought for direction in the nature of mandamus to respondent No.3 to receive/accept the filing of the petition under Section 28-A of the Land Acquisition Act, 1894 and decide the same in accordance with law as the respondent No.3 is not accepting the filing of the petitions.

In the written statement filed, the defence taken as such is that no petition has been filed under Section 28-A and there is no proof of a registered post or diary No. of LAC office. Therefore the application was required to be filed within three months before the said respondent from the date of award of the Reference Court. It is submitted that the application had been filed before the Reference Court on 30.03.2017 i.e. after the decision by this Court on 31.08.2015 and therefore the objection has been raised that it would be time barred as such.

A perusal of the paper book would show that the whole case of the petitioner is that they had approached the Additional District Judge directly by filing the petition under Section 28-A and in such circumstances the application was held not to be maintainable and ordered to be returned and directed to be filed before the appropriate forum. The relevant portion of the impugned order reads as under:-

“Written statement on behalf of respondent No.1 not filed. However, learned Govt. Pleader has appeared on behalf of the respondent No.1. He has pointed out that the present application under Section 28-A of the Land Acquisition Act, 1894 has not been filed with the respondent No.2 and the same has been filed directly in the court which is against the procedure provided under Section 28-A of the Land Acquisition Act, 1894. Learned counsel for the petitioners has conceded that the petitioners has filed the application directly to this Court and not to the respondent No.2. Keeping in view the fact that the application u/s 28-A of the Land Acquisition Act, 1894 can only be entertained by this Court on reference by the Land Acquisition Collector and not directly, the present application

is not maintainable in the present form and the same is ordered to be returned and may be filed before the appropriate forum/authority. File be consigned to the records.”

It is only thereafter that the petitioner has approached this Court seeking benefit of compensation @ ₹ 15 lakhs as decided by the Apex Court in case of Civil Appeal No.19345 of 2017 Rajender Singh & Ors. vs. State of Haryana & Ors. decided on 17.11.2017.

Keeping in view the defence which as such has been raised by the respondent that they have not received the application, the direction is issued to the respondents to treat the present writ petition(s) as petition(s) filed under Section 28-A of the LA Act on 19.04.2018, the date it was filed in this Court, as this Court has no reason to doubt that the landowners would not agitate their grievances for higher compensation. It is due to misguided advice that they approached the Civil Court directly and the application was returned. Counsel for the State however submits that the issue of limitation be left open for the said respondent to decide. There is merit in the said submission as direction is only sought for in the present writ petition that the said respondent is not accepting the filing under Section 28-A and therefore the said respondent is duty-bound to decide in accordance with law.

Resultantly, these writ petitions are partly allowed and the respondent No.3 shall take decision on the said application(s) under Section 28-A of the LA Act by treating the present writ petition(s) as such having been filed from the above date. Necessary orders be passed on the said application(s). It shall be open to the respondent to ask for further material in support of the application under Section 28-A, if so required. The said respondent will thereafter decide the same within three months from the date

of receipt of certified copy of this order in accordance with law. Needless to say this Court has not expressed views on the merits of the case and the rights of the petitioner or on the issue of limitation etc.

Ordered accordingly.

08.05.2019
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(G.S. Sandhawalia)
Judge

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| 1. <i>Whether speaking/reasoned?</i> | Yes/No |
| 2. <i>Whether reportable?</i> | <i>Yes/No</i> |